

CHAPTER XVIII.

CRIMINAL PROCEDURE¹.§ 1.—*The Subject stated.*

The treatment which this subject will receive is necessarily fragmentary. I must confine myself to those portions of the subject which directly come under the notice of a Forest Officer in the course of his official duty, and those subjects are mainly, how offenders are arrested, how police investigations and the subsequent trial of offenders are conducted, how sentences are carried out and fines recovered, and what appeals are allowed. A few minor points, such as the special rules for trial of European British subjects, the practice in the execution of search warrants, and the rules for recording evidence in criminal cases, will also need a brief notice.

As, however, the Criminal Procedure Code itself contains much more than this, and some of the other subjects *may* from time to time engage a Forest Officer's attention, he may at least desire to know *where to find information* on some of the other topics of criminal procedure. I shall, therefore, devote a few paragraphs to presenting a general idea of the contents of the Criminal Procedure Code, as in force in British India, as a whole.

§ 2.—*The Plan of Criminal Procedure Law.*

The law in force is Act X of 1882².

¹ It is possible that this book may be published a month or two before the Code actually comes into force, which is from the 1st January 1883. Up to that time the old Code (Act X of 1872, amended by Act XI of 1874) will still be used: but the new Code differs very little *in principle*, from the old. The new Code is mainly distinguished by the fact, that while in the old Code all subjects followed one another without order and logical arrangement, the order is now consecutive and logical. There are of course alterations in detail, and many previous difficulties have been removed.

² Throughout this chapter, I expect the student to refer to the Code itself: the chapter, I desire to make it clear, is only a *Guide* to the Code. The words of the section must be referred to wherever action is to be taken. It is essential to see that a copy of the Code is obtained which gives the amended form of the law.

The "Substantive" criminal law is that which constitutes certain acts to be offences, and prescribes penalties for them. The centre of this law is the Indian Penal Code, but it is supplemented by various "special laws," dealing with particular subjects, for example, Forests, Excise, Opium, Customs, Stamps, under which acts or omissions contravening the law also become offences. The substantive law also lays down the general nature and limits of the punishments which may be inflicted, and this we have already considered. The "Adjective" or Procedure law is a necessary complement to the substantive, since it has to tell us which are the Courts which can try offences, how these Courts are to proceed in investigating and trying cases, and what is the method of executing sentences; there are also many subjects, such as the prevention of crime and other exercises of Police and magisterial powers which have to be provided for. I will then first present the reader with a skeleton or outline of the contents of our Criminal Procedure law.

§ 3.—General Outline of Procedure Law.

First, of course (after preliminary matter and definition of terms), comes the *constitution of the different Criminal Courts* according to their grade or class.

Next, the *powers* of these Courts have to be specified, the description of offences each may try and the amount of punishment each is competent to inflict.

Parts I and II.
Chapter III.

Part III.
Chapter IV.

The authorities thus constituted, the first subject in natural order is the acquisition of *information* that *offences* have been *committed*: and the duty of the public, or of certain classes, in giving information and aid to the Magistracy or to the Police, is accordingly laid down.

As in the discovery and prosecution of all offences, the production of property connected with the case, and the getting hold of the persons required either to answer for offences, or to give evidence,

is necessary, the general provisions relating to the execution of *warrants* of arrest, of the *arrest* of persons in certain cases *without warrant*, of *summons* and their service, and of warrants to *search*, are next set out.

But before proceeding to the investigation and trial of cases,

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it is obvious that much may be done for

the *prevention of offences* : and provisions regarding this subject logically come before provisions relating to the discovery and trial of offences actually committed. The subjects which come under the head of prevention will recur familiarly to the reader directly they are mentioned.

Security may be taken, for example, from persons whose enmity

Chapter VIII, A. B.

may cause a *breach of the peace* to be

likely. Suspicious characters, who are of notoriously *bad livelihood*, or have no ostensible means of living, are likely to be concerned in offences, and therefore may be called on to give *security for good behaviour*.

Again, when persons assemble in groups (the law fixes five as

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the minimum number which warrants

interference) for some bad purpose, it is time for the Magistrate to interfere under provisions directed to the *dispersion of unlawful assemblies*.

Nuisances (of the kinds specified by law) may be removed also

Chapters X, XI.

by order of Magistrate, and thus calamities of different kinds obviated.

Obstructions to public roads, &c., may similarly be removed by

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order. These are obviously preventive

provisions. So again in *disputes* about land and houses. The feelings of rival claimants often run so high in these matters that rioting and even bloodshed may be apprehended. The law thus arms the Magistrate with power, summarily to maintain the person in actual possession in the position he occupies *de facto*, and so compel the opposite side to resort to legal and peaceable means of getting the question of right settled³.

³ See *ante*, Chapter I, page 19.

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The *Police* also may do many things towards the prevention of offences.

Having thus disposed of the subject of prevention, the law proceeds to describe how offences may

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Chapter XIV.

be discovered and their perpetrators brought to justice. In grave cases,

the Police force is set in motion by complaint or information; and the proper officers are armed with powers to investigate, and to arrest suspected persons, thus finding out the case, getting together evidence, working up the proof, and then submitting it for disposal to the Criminal Courts.

Detailed provisions enabling the Police to act in this way are enacted; and along with them certain further provisions necessary to protect the public from any abuse of authority in the exercise of such powers.

With the lesser classes of offences the Police are not empowered to deal without an express order of the Magistrate: and in these the injured parties have to submit their *complaints* direct to the *Magistrate*, who will then proceed to issue his process to compel the appearance of the wrong-doer.

Thus, whether the case has come before the Magistrate through

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the agency of the Police, or by means of a complaint directly preferred to him,

we have now the case actually ready for the *trial* of the *offender*.

To this subject there are several preliminary points. It has to be determined at what *place* trials

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are to be held, in what manner cases

are to be brought under the cognizance of the different Courts, *what* Magistrates may receive complaints, how cases are to be brought to trial before Sessions or High Courts, and so forth. In some cases special sanction is required (as we have seen) before a Court can enter on the prosecution at all. Then we come to the actual procedure according to the class of cases and the Court before which it is tried.

The order of proceeding is laid down for each different form of trial—the *committal* of cases by a Magistrate for *trial* by the High Court or

Chapters XVIII—XXII.

the *Sessions Court*, the *trial* of cases *before Magistrates*, and the *summary* procedure which may be adopted in certain cases.

Under the head of trials before the High Courts and Sessions Courts, which are tried with the aid of

Chapter XXIII.

Juries or Assessors (as the case may

be), provisions are made regarding the selection of Jurymen and Assessors, their duty and so forth.

Next follow provisions regarding various incidents of trials, such as the *tender of pardon to an*

Chapters XXIV, XXV.

accomplice, so that he may be used as a

witness, or what is popularly called “Queen’s Evidence;” the power of *compounding offences* and so stopping the trial, and certain other matters. A special chapter is also devoted to the work of *recording evidence* on trials, and recording *statements* or *confessions* made by *accused persons*.

Then follow provisions regarding *judgments, confirmation of sentence* in certain cases, and the *execution of sentences and recovery of fines*,

Chapters XXVI—XXX.

together with rules regarding the suspension or *commutation of sentences*, and the effects of previous acquittal or conviction.

This brings the subject of original *trials* to a close; but the law contemplates an *appeal* in certain cases;

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Chapters XXXI, XXXII.

moreover, there is a power of *revision* in certain cases whereby the superior

Courts may supervise, and correct errors in the practice of the Subordinate Courts.

There are still a number of topics incidental to trials, which require to be dealt with, and some

Part VIII.

special subjects which are *per se*, but

still involve the action of the Criminal authorities, and so belong to the Procedure law.

Directly connected with trials are the provisions regarding the trial of *Europeans' and Americans*, procedure when the criminal tried turns out to be a *lunatic*, and certain special procedure in *cases* (like contempt of Court) *affecting the administration of justice*; also there are cases in which a Magistrate is asked to make an order to compel the *maintenance of wives and children*.

Less directly, but still appreciably, connected with the conduct of trials, are the subjects of the appointment, powers and duties of *Public Prosecutors* ; provisions relating to *bail* and *recognizances* of persons released from

Part IX.
Chapters XXXVIII—XLIII. custody, or required otherwise to appear on certain dates for trial, or to give evidence. It may be desired also to issue *commissions* to examine absent witnesses who cannot conveniently be had personally before the Court, and *special means* are provided for recording evidence of *Chemical Examiners to Government* or *medical witnesses*, whose duties render it impossible for them to attend personally to give their evidence. *Property* also may be produced at trials (as stolen or otherwise) and rules for the disposal of this are necessarily included.

It may sometimes be desirable that cases should be *transferred* from one district or place for trial at another : provisions regulating this are enacted. And when there has been some *irregularity* in the various steps and processes above indicated, it is a question to be determined by law how far such *irregularity* vitiates or renders *null and void* the proceedings.

Lastly, there is a *residuary chapter* for various details, which cannot appropriately find place in the chapters preceding.

This summary, though it is brief and touches the leading sub-

In Assam there is a Judicial Commissioner, but he is like a Commissioner or Sessions Judge, and the Bengal High Court is the "High Court" for the province⁸.

Speaking generally, the chief criminal authority, whether called High Court, Chief Court, Judicial Commissioner (or in Ajmer the Chief Commissioner) is under section 4 of the Criminal Procedure Code the "High Court" of the province for the purposes of the Code.

With the details of the working of the High Courts or the procedure in the trials held before them, the Forest Officer need not trouble himself.

§ 2.—*The Courts of Session.*

Next in grade come the *Courts of Session*. In "non-regulation" provinces these are the Courts of Commissioners of Civil divisions, and have jurisdiction over the districts in their division; but there are often Additional Sessions Judges, who share the work and take up cases in certain local limits which are prescribed by Government.

In Regulation provinces there are Sessions Judges, who are separate from the Civil and Revenue Commissioners of Divisions, and there may be Assistant Sessions Judges with restricted powers (described in the Code, sections 9, 31, 194).

Sessions Courts try in their original jurisdiction, those grave cases (such as murder, dacoity, &c.) which are either reserved by law to their special jurisdiction⁹ or are of such a serious nature that the powers of a Magistrate are insufficient to deal with them adequately. Sessions Courts never take up these cases either by direct complaint of any person or by the direct report of the Police. (Code section 193.) The same is true of cases before the

these officers have powers somewhat less than those of a High Court (Regulation I of 1877, section 38). This is also the case with the Judicial Commissioners of the Central Provinces and Oudh, and also in Berar. (See C. P. C., section 4 (e).)

⁸ See Act II of 1835.

⁹ As may be shown in the appropriate column of schedule II, at the end of the Procedure Code.

jects only, gives, I think, a tolerably fair account of the object of our Procedure law.

I will now proceed to fuller detail on those subjects which more or less directly enter into the official duty of Forest Officers. These chiefly relate to the investigation and prosecution of offences of those classes which have been already described in Chapters XIV and XV.

SECTION I.—THE CRIMINAL COURTS.

§ 1.—*The High Courts.*

The highest Courts which have ultimate powers of appeal and supervision (besides in some cases an original jurisdiction, such for example as that in trials of European British subjects on charges of murder, &c.) are variously styled and constituted in different provinces. In Bengal and the North-West Provinces, Bombay and Madras there are "High Courts" (which are constituted under "Letters Patent" by Royal Charter). In the Panjab there is a "Chief Court" (constituted originally under Act IV of 1866, now under Act XVII of 1877, and not being a Court by Royal Charter)⁴. In Burma there is the Court of the Recorder of Rangoon, which is for certain purposes a High Court⁵, and a Judicial Commissioner who superintends all the District Courts and all other criminal matters not specially within the jurisdiction of the Recorder, as the High Court⁶.

In the Central Provinces and Oudh there are Judicial Commissioners, and in Ajmer the Chief Commissioner, and these are for the purposes of the Criminal Procedure Code the "High Courts" of the province⁷.

⁴ In the High Courts the Judges are appointed by the Queen. In the Chief Court of the Panjab by the Governor General in Council.

⁵ See Act XVII of 1875, section 61, &c. And he hears as High Court all cases in which European British subjects would have to be tried by a High Court in other provinces. (Section 62.)

⁶ Act XVII of 1875, section 35.

⁷ In Ajmer the Chief Commissioner does not try European British subjects for those grave offences which are reserved to the highest Court. In this respect

High Court (section 194). Such cases always go first to a Magistrate who holds an *enquiry*. In the course of this he takes down the evidence for the prosecution (not that for the defence, except under particular circumstances), examines (if necessary) the accused, and then draws up a *charge*; and then recording an analysis of the case, and his reasons for concluding that an offence is established, at least *prima facie*, he *commits* the case to the Sessions; and it is then that the *trial* itself is held, the evidence being recorded, the defence made, the defence witnesses examined, Counsel (if any) heard, and a judgment given, convicting or acquitting the prisoner. These trials are held with the aid of *Assessors*, or in certain places, under the orders of Government, with *Juries*.

Forest Officers so rarely have anything to do with bringing to justice cases of this order, that I shall omit all further mention of the enquiry previous to committal, or the Sessions trial after committal: but chapters describing each are to be found in the Code.

The *Appellate* functions of the Sessions Courts will be mentioned in due order.

§3.—*Courts of Magistrates.—Powers as regards Scale of Punishment.*

The Courts of *Magistrates* are then those which it is important for the Forest Officer to learn the details of.

All Magistrates are classified under the Code into three grades or classes, those of the 1st, 2nd, and 3rd class (section 6).

The first class can sentence up to two years' imprisonment and 1,000 rupees fine (including whipping)¹⁰, 'and solitary confinement'¹¹ when authorized by law.

The second class can sentence up to six months' imprisonment and 200 rupees fine (with similar powers regarding solitary confinement), and of whipping if authorised by the Local Government (section 32, last clause).

¹⁰ Under Act VI of 1864.

¹¹ The rules about solitary confinement, and what the limits are, will be given in sections 73-74, I. P. C.

The third class can only sentence up to one month or to 50 rupees fine, and cannot make an order for solitary confinement or for whipping.

A Magistrate may also pass any lawful sentence combining any of the sentences which he is authorised by law to pass: thus, he may (if it is so in the law) award both fine and imprisonment, or imprisonment and whipping, or all three.

Imprisonment in default of fine can be awarded in addition to the term of imprisonment awarded as the primary imprisonment.

In the Panjáb, Oudh, Burma, Central Provinces, and parts of other provinces where there are Deputy Commissioners, &c., the Magistrate of the district may be given, under section 30, "special powers" to try as *Magistrate* all offences not punishable with death, and pass any sentence authorised by law up to seven years' imprisonment, with such fine (not otherwise limited) as may be awarded by law for the offence—whipping, solitary confinement, &c. Sentences of upwards of three years' imprisonment require confirmation by the Sessions Judge, who may confirm, annul, or modify the sentence, or make further enquiry (section 34). This procedure, of course, saves a great deal of work to the Sessions Courts.

§ 4.—*District Magistrates—Sub-divisional Magistrates.*

Besides their powers of inflicting punishment, there are great many other powers which Magistrates require to exercise, such as granting warrants, taking up complaints, taking security, and so forth: all these powers are enumerated in a list contained in Schedules III and IV.

And the principle on which they are conferred is this: All Magistrates (of whatever class) have *ex-officio* certain of these powers (section 36 and schedule III). But then in every district there is the District Officer (Collector or Deputy Commissioner), who is a Magistrate. As such he is called the "District Magistrate," section 36, and he possesses *all* the powers of a Magistrate, *i.e.*, *all* the powers mentioned in Schedule III.

In many districts also portions of the district are placed in charge of an Assistant, and this officer is also a Magistrate. If he is put in criminal charge, he is called a Sub-divisional Magistrate. He may be so appointed by the Local Government or by the District Officer if power to do so have been delegated (section 13). Every Sub-divisional Magistrate has the powers specified in Schedule III as belonging to him. Besides these powers, the Sub-divisional Magistrate, as such, and Magistrates of the 1st, 2nd and 3rd class respectively, may be invested (a) by the Local Government and (b) by the District Magistrate (subject to the control of the Local Government, section 38) with certain additional powers enumerated in schedule IV.

It should be remarked that originally, as regards jurisdiction with respect to *amount of punishment*, a Sub-divisional Magistrate may be of either the first or second class, but in other respects he has the powers of a 1st class Magistrate (see schedule III), and may be invested with power to call for records under section 435.

§ 5.—*Use of this information to a Forest Officer.*

It is not expected that a Forest Officer will carry in his head the whole of these details, but it may be useful to him to know where to look for information in cases where he has to make any application to a Magistrate. For example, he is likely, on occasion, to have to apply to a Magistrate to *entertain a complaint* of an offence, which is not one which, as a forest offence under the Forest Act, he thinks it necessary for the Police to take up; he may also want to apply for a *search warrant*, or he may want an order to the *Police* to make an *investigation* in cases in which they cannot by law act without such order.

In these cases, it is of no use going to a second-class Magistrate to entertain a complaint unless he has been invested with powers, or is in charge of a sub-division. It is no use asking a third-class Magistrate for an order to the Police to investigate (section 155); he has not, and cannot get, such powers.

A search warrant (section 96) can be granted by any Magistrate.

Shortly, *everything* can be done by a Magistrate of the district, and *most* things by a Sub-divisional Magistrate, the difference being in certain more important and exceptional functions; and in the matter of appeals, Sub-divisional officers being Magistrates of the first class, may be specially empowered to hear appeals from Magistrates of 2nd and 3rd class.

All Magistrates in a district, of whatever grade, are subordinate to the Magistrate of the district (section 17). Magistrates in the sub-division are subordinate to the Sub-divisional Magistrate, subject to the control of the District Magistrate (section 17, paragraph 2).

Magistrates of a sub-division are subordinate to the Sessions Court, only to the extent and for the purposes expressly provided by the Act.

§ 6.—Jurisdiction of Magistrates with reference to Offences under Penal Code.

The preceding paragraphs will have explained that the *powers* of Magistrates are limited according to their grade, but that does not completely determine what cases they can try. It is obvious that a Magistrate with powers up to six months' imprisonment will have no jurisdiction to try an offence, the fixed *minimum* punishment for which is say one year. But the majority of offences are punishable with a sentence, the *maximum* of which is stated by the law. A theft, for instance, may be very petty, or may be serious and require three years' imprisonment; nevertheless, all Magistrates can try thefts. In order, therefore, further to discover what class of Magistrate can try what offences, it is necessary to refer (in the case of offences under the Penal Code) to the appropriate section as shown in Schedule II to the Procedure Code.

§ 7.—Jurisdiction of Magistrate under other Laws.

And as regards all offences punishable under *special* laws, such as the Forest Act, we must go to section 29 of the same Code, where we learn that in the absence of special provisions, a third-class

Magistrate cannot try when the offence is punishable with imprisonment that may extend to one year, and a second-class Magistrate cannot try an offence when it is punishable with imprisonment which may extend to three years; so that as regards forest offences most of which are not punishable with more than six months with or without fine, *any* Magistrate can try them, though he cannot of course give a sentence in excess of his powers. But the Burma Forest Act expressly provides that third-class Magistrates (see definition clause) are only to try forest offences when specially empowered. In the case of the particular forest offences mentioned in section 62 to the Code, these could not be tried by a third-class Magistrate (because the punishment is in excess of a year), but only by a first or second-class Magistrate.

§ 8.—Procedure when Jurisdiction appears to fail.

It is usually known beforehand, either from the preliminary investigation of the Police, or from the examination of the complainant, whether the case is a grave one or a petty one, and so the Magistrate, in distributing cases for trial (section 192) would naturally use his discretion in sending cases to Magistrates not only who have power to try, but whose class is such that *prima facie* they will be able to deal with them sufficiently. Nevertheless, the law has made a convenient provision (section 349) that if a Magistrate of *the second or third class*, having jurisdiction to try a case, finds that a severer sentence than he can give ought to be passed, he can find the accused guilty, and *record no sentence*, but send his proceedings to the District or Sub-divisional Magistrate to whom he is subordinate, and this Magistrate may, if he thinks right, with or without recalling the witnesses, or making further enquiry, pass such sentence as he thinks fit.

9.—Procedure when case appears beyond Magistrate's power.

This latter only relates to cases where the Magistrate *has* jurisdiction to try the case, only the punishment required is more than he can award.

In any case, if a Magistrate, on hearing the evidence, thinks it establishes an offence which he is not competent to try (section 346), he is bound to stay proceedings and submit the case to the Magistrate to whom he is subordinate; this officer will then refer it for trial to some competent Court or hear it himself.

§. 10.—*Magistrate's Jurisdiction as regards Locality.*

Besides this question of jurisdiction as to *extent of power*, and as to *class of cases*, there is yet the question of *locality*. In forest cases there is rarely likely to be any question; the offence is usually an act done in one place, and that is in the district or sub-division of a district, and there is no learning required to determine that a Magistrate at the "Sadr" or sub-divisional "Cutchery" can take it up. Still it may occur that a man has stolen a log in District A, taken it down the river and cut it up or sold it in B, and so on; or a forest clerk has been entrusted with money in District B to pay coolies, and goes off by train and fraudulently conceals for his own purposes part of it in C, and spends the rest in D. I shall therefore briefly describe the sections which deal with *local jurisdiction*, or the place at which a trial or enquiry may be held.

The general rule is (sections 177-8) that the offence is enquired into or tried in the district in which it is committed, or, if sent to the Sessions, goes to that Court to which the Magistrate commits, which usually is the Court of the division, or of the Additional Sessions Judge, who under orders of Government takes up the cases of certain districts.

Offences under the Forest Act follow this general law (sections 5, 29), as there is nothing otherwise said about local jurisdiction in the Forest Act.

The High Court only (section 526) can, to promote the ends of justice or the general convenience of the parties or witnesses, transfer any criminal case from one Court subordinate to it to another, or try it itself, or direct that an offence committed in one district shall be tried in another.

Any transfer from a Criminal Court subject to one High Court to a Court subject to another High Court, can only be ordered by the Governor General in Council. (Section 527.)

It may happen that a person is accused of an offence by reason of an act done and of a consequence which has ensued, and the act is done in one district and the consequence ensues in another; here the trial may be in either (see section 179 and the illustrations); so when an act is an offence by reason of its relation to another act which is an offence, it may be tried either in the district in which the act happened, or that in which the act to which it is related happened. (Section 180.) These sections come commonly to notice in cases of *abettment* and receiving *stolen* property. An act of abettment is an offence by reason of its relation to the act which is the primary offence, and it may be tried either in the district in which the crime itself was accomplished, or in that in which the act which constituted the abettment was done. So with receiving stolen goods: here the receiving is an offence by reason of its relation with the theft, and may be tried either where the goods were received or where the theft occurred.

In cases of uncertainty, or when the offence is partly in one district and partly in another, or when it is a continuing offence and goes on in several districts, or consists of several acts done in different districts, it may be tried (sections 182-3) in any of such districts. Instances an offence committed in a railway carriage on a journey, or near the boundary of two districts, and it is uncertain if it was exactly in one or the other².

² But not so if it is a question of being in British territory, or just outside it; for outside British territory the Court may have no jurisdiction, and then the matter requires nice discussion. In 1880 there was a case of a forest guard of the Nahan State shooting a British subject close to the border between the Amballa District (Panjab) and the State: the most elaborate enquiry as to the position of the boundary line and that of the man when he fired and of the deceased had to be made and it was ultimately found that the offence was actually committed in Foreign territory.

As regards the case of an offence committed by an European British subject in a Native State in alliance with the British Government, or where a Native Indian subject commits an offence anywhere beyond British India, see section 188.